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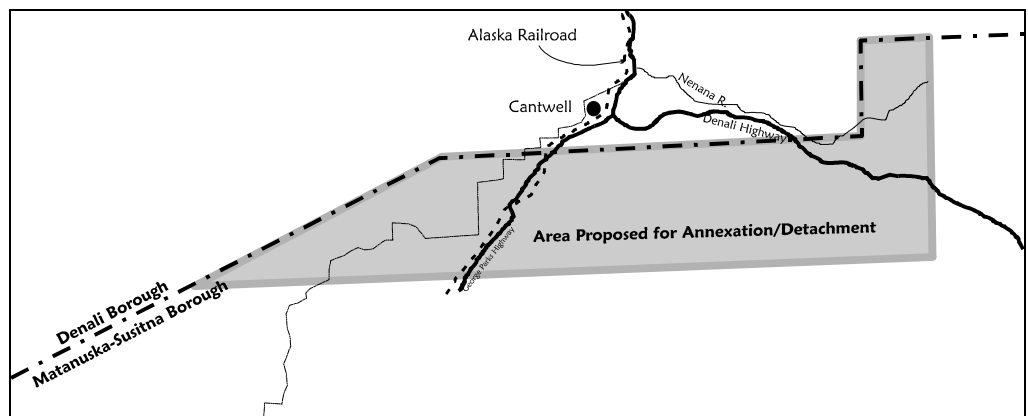


# **Local Boundary Commission Statement of Decision**

**IN THE MATTER OF THE MARCH 4,  
1996 PETITION BY THE DENALI  
BOROUGH FOR DETACHMENT OF  
APPROXIMATELY 992.5 SQUARE  
MILES FROM THE MATANUSKA-  
SUSITNA BOROUGH AND  
ANNEXATION OF THE SAME  
TERRITORY TO THE DENALI  
BOROUGH**

## **SECTION I INTRODUCTION**

As allowed by 19 AAC 10.420, the Denali Borough petitioned the Local Boundary Commission on March 4, 1996 to detach 992.5 square miles of territory from the Matanuska-Susitna Borough and annex that area to the Denali Borough. The subject territory is generally undeveloped and sparsely inhabited. The petitioner estimated that the area has a resident population of 10 and the respondent Matanuska-Susitna Borough estimated the resident population of the area at 20. The George Parks Highway, the Denali Highway, and the Alaska Railroad traverse the area.



## **SECTION II PROCEEDINGS**

Upon a staff determination that the form and content of the Denali Borough's petition were sufficient, notice of the filing of the petition was published and posted in accordance with 19 AAC 10.450. Notice was also mailed to 33 individuals and organizations. Under the Commission's regulations, a responsive brief opposing the petition was filed by the Matanuska-Susitna Borough. Preliminary and final staff reports, together with written comments were made part of the record.

In accordance with 19 AAC 10.550, notice of the Commission's December 6, 1997 hearing was published, posted, and distributed.

**STATEMENT OF DECISION  
PETITION FOR DETACHMENT OF TERRITORY  
FROM THE MATANUSKA-SUSITNA BOROUGH AND ANNEXATION TO THE DENALI BOROUGH  
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After an inspection of the subject area by automobile, the Commission convened a formal hearing on the application on December 6, 1997 at the Cantwell Community Center. The public hearing began at 11:00 a.m. and continued until 5:30 p.m. At the hearing, the Commission received testimony from 15 parties, including the Denali Borough, Matanuska-Susitna Borough, the Ahtna Corporation, residents of Cantwell, and residents and property owners of the subject area.

Following the December 6 hearing, the Commission recessed its meeting until December 10, 1997 at 8:00 a.m. At that time, the Commission voted 3-2 to deny the Denali Borough's petition. Commissioners Waring, Tesche, and Walters voted to deny the petition, while Commissioners Wasserman and Cannington voted to approve the petition.

The record in this proceeding includes the Denali Borough's annexation petition and brief, the responsive brief of the Matanuska-Susitna Borough, the reply brief of Denali Borough, written comments on the petition submitted directly to DCRA by one individual, DCRA's draft report, written comments on DCRA's draft report from seven parties, DCRA's final report, DCRA's letter of December 5 to Commissioner Allan Tesche, testimony and comments at the Commission's December 6, 1997 hearing, the Denali Borough's one-page platting ordinance, and the December 9, 1997 letter from the Denali Borough Mayor concerning the Denali Borough's planning activities. Considering the evidence in the record, the Commission reached the findings and conclusions set out in this decisional statement. Section III of this decisional statement sets forth the views of the majority, and Section IV sets forth the dissenting views of Commissioners Wasserman and Cannington.

**SECTION III  
FINDINGS AND CONCLUSIONS**

**A. COMMUNITY OF INTERESTS (19 AAC 10.160).**

The area in question may be annexed to the Denali Borough, provided, in part, the Commission determines that the social, cultural, and economic characteristics and activities of the people in the territory proposed for annexation are interrelated and integrated with the characteristics and activities of the people in the Denali Borough. Although the standard calls for a comparison only of the area proposed for annexation with the Denali Borough, a comparison of the area with the Matanuska-Susitna Borough is also useful.

The area proposed for annexation is largely undeveloped and sparsely inhabited. The standard in question should be given a lesser degree of significance because the population of the area is minimal.

Like the Denali Borough as a whole, the area proposed for annexation is rural in nature. Much of the Matanuska-Susitna Borough is rural in nature as well, although the Matanuska-Susitna Borough has an urban core.

The Parks Highway, the Denali Highway, and the Alaska Railroad link the area with both the Denali Borough and the Matanuska-Susitna Borough. Residents of the area proposed for annexation are located closer to Denali Borough communities and services than they are to Matanuska-Susitna Borough communities and services.

The record of the proceedings in this case has revealed no evidence of any language differences between the area and either the Denali Borough or the Matanuska-Susitna Borough.

Although physically located within the Denali Borough and adjacent to the area proposed for detachment/annexation, the community of Cantwell represents only a small portion of the Denali Borough itself. Thus, comparisons of the area's ties should be with the Denali Borough vs. the Matanuska-Susitna Borough, not Cantwell vs. the Matanuska-Susitna Borough.

Residents of the area who attend public school, at least in recent history, have attended Denali Borough schools at Cantwell. Fire protection and emergency medical services in the area appear to be provided more efficiently and effectively from Cantwell rather than from the nearest

Matanuska-Susitna Borough community, Trapper Creek. The record suggests, however, that the Denali Borough may be merely a conduit for funding fire protection and emergency medical services in Cantwell rather than the entity that provides those services in a legally recognized fashion.

The Commission concludes from the foregoing that the social, cultural, and economic characteristics and activities of the people in the territory proposed for annexation are interrelated and integrated with the characteristics and activities of the people in the Denali Borough to a greater degree than they are to the Matanuska-Susitna Borough. Thus, the annexation standard set out in 19 AAC 10.160 is satisfied.

#### **B. POPULATION (19 AAC 10.170).**

The area in question may be annexed to the Denali Borough, provided, in part, that the Commission determines that the post-annexation population of the Denali Borough would be sufficiently large and stable to support the resulting borough government.

While the area proposed for annexation is largely unpopulated, the population of the Denali Borough currently exceeds 1,800 residents. Two other organized boroughs, the City and Borough of Yakutat and the Bristol Bay Borough, operate successfully with smaller populations. Further, the Lake and Peninsula Borough has about the same population as the Denali Borough, but that population is dispersed among many more communities. The Commission also finds that the population of the Denali Borough is reasonably stable.

The Commission concludes from the foregoing that the standard at issue is met. Extension of the Denali Borough's boundaries to encompass a sparsely populated area would not unduly stretch the human resources of the Denali Borough.

#### **C. RESOURCES. (19 AAC 10.180).**

The territory in question may be annexed to the Denali Borough, provided, in part, that the Commission determines that the post-annexation boundaries of Denali Borough would contain the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.

The Commission finds that since the area in question has a minimal population that would impose few demands for services, the economy within the post-annexation Denali Borough boundaries would include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level.

The Commission concludes from the foregoing that because the area proposed for annexation has a minimal population and would impose few demands for services, the economy within the post-annexation Denali Borough boundaries would include the human and financial resources necessary to provide essential borough or municipal services on an efficient, cost-effective level. Despite concerns over the degree to which the Denali Borough is exercising its powers of planning, platting, and land use regulation, the Commission concludes that the standard at issue is satisfied.

#### **D. BOUNDARIES. (19 AAC 10.190).**

The territory in question may be annexed to the Denali Borough, provided, in part, that the Commission determines that the proposed post-annexation boundaries of the Denali Borough conform generally to natural geography and include all land and water necessary to provide the full development of municipal services on an efficient, cost-effective level.

The Commission notes that the Natives in the community of Cantwell originally had a village corporation that selected land under the Alaska Native Claims Settlement Act in the area proposed for annexation. However, the village corporation has since merged with the regional corporation, Ahtna. Consequently, the ownership of the lands in question is with Ahtna. In fact, Ahtna owns more land in the Matanuska-Susitna Borough than it does in the Denali Borough. Further, Ahtna's headquarters are in the Copper River basin, outside any organized borough.

The Commission finds that residents of the area proposed for annexation are not ethnically or culturally tied to a greater degree with either the Denali Borough or the Matanuska-Susitna Borough. The Natives living in Cantwell have historical ties to the subject area. That factor supports inclusion of the area within the boundaries of the Denali Borough.

The area is integrated into both the Denali Borough and the Matanuska-Susitna Borough in terms of transportation patterns and facilities. However, it does have somewhat closer ties to the community of Cantwell because of its proximity to that community.

Geographic features and environmental factors support continued inclusion of the subject area within the Matanuska-Susitna Borough. For the most part, the natural drainage patterns flow south into Cook Inlet while Denali Borough drainage patterns flow to the north. Thus, in terms of watershed management, the area sought for annexation by the Denali Borough is already within the appropriate borough jurisdiction.

The Denali Borough helps fund fire protection and emergency medical services on an extraterritorial basis within the territory proposed for annexation/detachment. If the Denali Borough assumes significantly greater responsibility for direct delivery of borough services to the area proposed for annexation, such might support inclusion of the area within the Denali Borough.

By administrative regulation a “specific and persuasive showing” to the contrary must be made before the Commission may approve an annexation extending beyond the model boundaries of the annexing borough, as would be the case in this proceeding. As noted in the recent City and Borough of Yakutat annexation decisional statement, the Commission indicated that model borough boundaries should not be overturned lightly. The standard concerning model boundaries requires a higher level of proof concerning *all* of the other standards and criteria that, by regulation and the constitution, must be applied.

Although the petition presents legitimate arguments in favor of annexation, a “specific and persuasive” showing that this Commission should disregard the model borough boundaries has not been made here. The Commission is mandated by regulation to follow this particular standard. The proof presented by the petitioner in this case does not rise to the level required by this regulation.

The Commission concludes that natural geography does not warrant the proposed boundary change since the Matanuska-Susitna Borough’s northern boundary already generally conforms to natural geography. Further, the requisite “specific and persuasive showing” has not been made that the boundaries of the Denali Borough should be extended beyond its model boundaries to include territory within the Matanuska-Susitna Borough.

#### **E. BALANCED BEST INTERESTS (19 AAC 10.200 AND 19 AAC 10.270).**

19 AAC 10.200 provides that territory that meets the annexation standards in 19 AAC 10.160 - 19 AAC 10.190 may be annexed to a borough by the legislative review process provided the Commission determines that annexation is in the balanced best interests of the state, the territory proposed for annexation, and all affected political subdivisions. Similarly, 19 AAC 10.270 provides that territory may be detached from an organized borough provided the detachment is in the balanced best interests of the state, the territory proposed for annexation, and all affected political subdivisions.

One of the factors that may be considered regarding this standard is whether the territory manifests a reasonable need for borough government that can be met most efficiently and effectively by the annexing borough. In this case, the area demonstrates such a reasonable need for borough government services. In terms of proximity, the Denali Borough is in a better position to provide services than the Matanuska-Susitna Borough. Two of the primary current and future needs for this area are solid waste disposal and planning. The Denali Borough appears to be preparing to address solid waste problems, but it has a history of difficulty regarding such. In contrast, the Matanuska-Susitna Borough has demonstrated its willingness and ability to deal effectively with solid waste disposal. The Matanuska-Susitna Borough is also properly exercising its statutory obligation to provide areawide planning. The Denali Borough

has a comprehensive plan in place, but there is no evidence that it is actually implementing the plan.

Both boroughs have an interest in development of the area as in all probability there is going to be an economic spillover effect into both boroughs over time. However, once again, the Matanuska-Susitna Borough is actively planning while the Denali Borough is not implementing its planning in any substantive way at this time. For that reason this factor, at present, supports the status quo.

The evidence suggests there will be no significant financial impact upon the State of Alaska as a consequence of the proposed boundary change. However, the Commission finds that the State would be ill-served by the proposed boundary change since it would diminish the level of planning in an area that is poised for development. As is addressed in detail in Section III-I of this decisional statement, the Denali Borough is not currently satisfying its obligations under AS 29 as a home rule borough to provide certain essential services. It is not the Commission's role to regulate local governments on such matters, but in this case the issue was brought to the Commission and requires its attention.

The Commission is unable to identify any significant benefit to the Matanuska-Susitna Borough as a consequence of detachment, other than speculation that if the detachment occurred the Matanuska-Susitna Borough would be able to allocate its resources more efficiently to serve the remnant borough. However, that benefit is viewed as de minimus.

On the other hand, detachment would have certain negative impacts on the Matanuska-Susitna Borough. First, detachment would expand what is effectively an enclave along the Denali Highway. That action will make it more difficult for the Matanuska-Susitna Borough to continue to provide solid waste services in the area along the Denali Highway remaining within the Matanuska-Susitna Borough.

The Commission finds that if the territory develops, the future impact of lost property tax revenues to the Matanuska-Susitna Borough will be significant, even though there is little evidence of any immediate plans to significantly develop property in the area in question.

The letter in the record from Thomas Klinkner, Matanuska-Susitna Borough bond counsel, is couched in speculative terms regarding the potential impacts to the Matanuska-Susitna Borough. While the letter urges caution, it does not provide specific evidence that would allow the Commission to make a finding that the Matanuska-Susitna Borough's bond rating, in fact, would be adversely affected by this action.

The Commission rejects the "domino theory" espoused by the Matanuska-Susitna Borough that if this detachment takes place, other outlying areas will seek the same sort of relief to the further detriment of the Matanuska-Susitna Borough. Any other petitions for detachment from the Matanuska-Susitna Borough would be decided on their individual merits by the Commission.

The Commission recognizes that there would be a demonstrable benefit to private property owners within the area proposed for annexation if they are relieved from the obligation to pay property taxes. That is both a present and future benefit. Such circumstances may actually encourage development of the area in question. The territory in question would also benefit in terms of placing the residents of the area somewhat closer to the seat of local government. However, the proposed annexation would deprive the territory of the planning services being provided by the Matanuska-Susitna Borough.

The proposed boundary change would benefit the Denali Borough, if only through the satisfaction that Borough leaders would realize from being able to serve an important constituency. The net financial impacts to the Denali Borough, at this time, are insignificant.

In sum, the Commission concludes that the proposed boundary change would not serve the balanced best interests of the State, the territory to be detached, and the two political subdivisions affected by the detachment. Thus, the standard is not met.

#### **F. ARTICLE X, §1 OF ALASKA’S CONSTITUTION.**

Article X, §1 of Alaska’s constitution provides for maximum local self-government with a minimum of local governmental units and the prevention of duplication of tax-levying jurisdictions.

The proposed boundary change would not increase or decrease the number of local government units. Further, it would not create a duplication of tax-levying jurisdictions.

The maximum local self-government provision has been interpreted by the Alaska Supreme Court “to favor upholding organization of boroughs by the Local Boundary Commission whenever the requirements for incorporation have been minimally met.” Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92, 99 (Alaska 1974). By extension, the provision also favors upholding annexation by organized boroughs of unorganized areas whenever the standards for annexation are minimally met. In this case, of course, the territory in question is already part of an organized borough.

The Commission does not interpret the “maximum local self-government” provision of Article X, §1 to favor “more government” over “less government,” provided essential or mandatory services are being delivered. In other words, as long as essential or mandatory governmental services are being provided, “local self-government” is achieved. Whether an area has more government than the mandatory or essential services is considered by the Commission to be a political decision of the local jurisdiction.

Further, the Commission does not interpret “maximum local self-government” to mean “maximally local.” To follow “maximally local” to its logical conclusion would result in unwarranted fragmentation of local government at the borough level, something which the constitution does not favor.

Instead, the Commission interprets the maximum local self-government provision of the constitution as endowing local governments with broad powers to provide necessary and essential services and address local problems.

In terms of self-government actually being exercised, the record reflects that the Matanuska-Susitna Borough more adequately provides the mandatory areawide powers of planning, platting, and land use regulation, and the essential service of solid waste disposal than does the Denali Borough. A detailed discussion of the shortcomings of the Denali Borough regarding planning, platting, and land use regulation is provided in Section III-I of this decisional statement. Considering the shortcomings of the Denali Borough in providing essential services, the Commission concludes that the principles embodied in Article X, §1 of Alaska’s constitution do not support the proposed boundary change.

#### **G. ARTICLE X, §3 OF ALASKA’S CONSTITUTION.**

Article X, §3 of Alaska’s constitution mandates that each borough embrace an area and population with common interests to the maximum degree possible.

As was noted previously, the area proposed for annexation is largely undeveloped and sparsely inhabited. Certain essential services such as education, fire protection, and emergency medical services appear to be most efficiently provided to the area from the Denali Borough. Further, the area in question is more proximate to the service delivery facilities of the Denali Borough than it is to those of the Matanuska-Susitna Borough. For these reasons, the Commission concludes that the social, cultural, and economic characteristics and activities of the people in the territory proposed for annexation are interrelated and integrated to a greater degree with the Denali Borough than they are with the Matanuska-Susitna Borough.

The Commission concludes that the principles embodied in Article X, §3 of Alaska’s constitution support the proposed boundary change.

#### **H. EFFECT ON CIVIL AND POLITICAL RIGHTS (19 AAC 10.910).**

A boundary change cannot be approved which will deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

Nothing in the extensive record of this proceeding suggests that the proposed boundary change would violate this particular provision of law. Consequently, the Commission concludes that the annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

#### **I. TRANSITION PLAN (19 AAC 10.900).**

19 AAC 10.900 requires that a petition for annexation include a practical plan demonstrating the intent and capability of the annexing borough to extend essential borough services into the territory proposed for annexation in the shortest practicable time after the effective date of the proposed annexation. It must also include a practical plan demonstrating the manner in which all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, service area, or other entity located in the territory proposed for annexation/detachment will be assumed. Further, the petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, service area, or other entity located in the territory proposed for annexation.

Plans for assumption of powers and functions and transfer of assets and liabilities must be developed in consultation with the officials of affected entities. The record shows that the Denali Borough developed its transition plan without substantive consultation with staff of the Matanuska-Susitna Borough.

Certain factors in this case highlight the reason why the Commission's regulations require such consultation. The Denali Borough -- without either any apparent prohibition or statutory authority -- seeks some sort of offset against the Matanuska-Susitna Borough for the "value of services" provided by the Denali Borough to the territory in question. On the surface, that is perhaps a reasonable demand. On the other hand, the Commission can well imagine that the Matanuska-Susitna Borough, in good faith negotiations, may take the position that somehow there should be compensation from the Denali Borough for loss of future property tax revenue in the event that property in the subject area is developed significantly after it is removed from the Matanuska-Susitna Borough's tax base. The fact that appropriate discussions have not occurred in this instance results in a transition plan that is weakened because it contains a proposal rather than a specific plan or agreement that has been worked out between the parties to resolve the issues.

The transition plan included with the Denali Borough's petition is largely a promise to extend to the territory, existing borough services in the same manner that those services are now provided to the area presently in the Denali Borough. There is doubt about the Denali Borough's capacity to provide solid waste services to the territory in question. Testimony at the hearing indicated that the Denali Borough had not yet reached an agreement regarding a solid waste hauling contract. The Borough's landfill site has apparently been selected, but transfer sites have not even been identified. So as far as solid waste services are concerned, the capacity of the Denali Borough to provide those services to this territory is not yet demonstrated.

A more serious problem is the issue of planning, platting, and land use regulation. Evidence in the petitioner's brief, other documents in the record, and the hearing testimony demonstrate that the Denali Borough does not currently fulfill its statutory obligation to provide planning, platting, and land use regulation.

Under AS 29.35.180(b), planning, platting, and land use regulation are mandatory areawide powers of home rule boroughs. They are, by statute, essential borough services just as education is an essential borough service. As a home rule borough, the Denali Borough does have broad latitude in how it exercises its mandatory functions of planning, platting, and land use regulation. By law, the Borough must nevertheless exercise those powers.

The Denali Borough celebrated its seventh anniversary on December 7, 1997. It has had ample time to complete and adopt a comprehensive plan, enact land use regulatory ordinances, and put into place the administrative apparatus to implement planning. The record shows that the Denali Borough has not fully accomplished those ends and lacks any intent to do so in the foreseeable future.

In particular, the Denali Borough comprehensive land use plan is not a comprehensive plan in any conventional sense of that term. The Borough's plan is not a comprehensive plan as defined in AS 29.40.030(a).<sup>1</sup> Although the Denali Borough, as a home rule borough, is not obliged to follow that particular law, AS 29.40.030(a) is a good working definition of the term "comprehensive plan." In contrast to the nature of a comprehensive plan outlined in AS 29.40.030(a), the Denali Borough's comprehensive plan is mainly a compilation of background facts and analysis. It has some discussion of planning issues, but lacks any established planning policies. It does not include a land use plan that might serve as a foundation for a legally defensible zoning ordinance or similar land use controls. It does not include meaningful recommendations for plan implementation. Further, it is not a plan as professional planners commonly think of comprehensive plans.

The Denali Borough's existing one-page platting ordinance addresses only very minimal survey requirements and certain access requirements. It does not set meaningful standards for subdivisions that would protect the public health, safety, and general welfare of future residents of new subdivisions. The Denali Borough has apparently not attempted to develop land use regulations such as a zoning ordinance or a workable subdivision ordinance, even in a primitive form. To date, the Borough assembly has not established a separate planning commission, platting board, or planning administration. The Borough assembly performs and oversees all those functions.

Funds appropriated by the Denali Borough assembly for planning activities are appropriated to the legislative branch, not the executive branch. The Borough's past budgets give further evidence of the Borough's shortcomings regarding planning, platting, and land use regulation. The Borough has operated since Fiscal Year 1991. The Borough spent no funds for planning during its transitional period in Fiscal Years 1991 and 1992. In Fiscal Year 1993, it spent \$1,720 for planning. In Fiscal Year 1994, it spent \$682 for planning. In Fiscal Year 1995, the Denali Borough spent \$37,013 for planning, and in Fiscal Year 1996 it spent \$14,002. In Fiscal Year 1997, it spent \$44,924 for planning. Thus, in the past five years, the Denali Borough has spent less than \$100,000 for planning – an average of less than \$20,00 annually. For Fiscal Years 1996 and 1997, the Borough budgeted a total of \$141,970 for planning but only spent about \$59,000, roughly 40% of the amount budgeted.

Further, most of the planning expenditures in Fiscal Years 1996 and 1997 were for municipal land selection, rather than planning, platting, or land use regulation. AS 29.35.180(b) provides that areawide planning, platting, and land use regulation are essential services for a home rule borough. They are not optional services. Denali Borough officials testified about the Borough's practice of providing only the level of planning services that the public wants. That may be appropriate so long as the Borough meets its statutory obligations, but in this case it has not.

Page 3 of Exhibit 13 of the respondent Matanuska-Susitna Borough's brief concerns a meeting of the Denali Borough assembly during which the assembly was considering adoption of the comprehensive plan and perhaps some other planning related ordinances. That record shows that the Denali Borough attorney at that time advised the Borough assembly that, essentially, the Borough has been negligent in exercising planning powers. Specifically, the minutes of the July 9, 1995 assembly meeting indicate as follows:

Ken (Lougee, former Denali Borough attorney) said that the Denali Borough is a home rule municipality where powers come from the charter and certain statutes. In AS 29.35 where it discusses comprehensive land use plan it says a home rule borough shall provide for planning, platting, and land use regulations. The Borough cannot do spot zoning or spot platting and put

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<sup>1</sup> AS 29.40.030(a) reads "The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan;
- (5) recommendations for implementation of the comprehensive plan."



regulations on it. The notion is to treat like people alike and like property alike. Give people a right to appeal to the assembly and the court. The last thing is do not take all economic use, which is called a 'taking.' Ken suggested that the Borough get on with the process. Caswell said that it is up to the assembly. Ken agreed it is up to the Borough, but as a lawyer he is going to tell you why you should get on with it. Caswell said we were not even discussing zoning whatsoever, and it is not on the table. Ken said that is fine, you people make the decisions, I am just the lawyer. Ken said the reason you (the assembly) should get on with this is because five years down the road the Borough may get hit with a lawsuit out of the developed areas. Ken said there is no way the Borough can raise enough revenue to pay the damages that could come out of that. Stowell said he is playing ignorant and asked what an example of a feared lawsuit could be. Ken said because the Borough has been negligent in their planning, platting, and zoning powers someone could build something truly obnoxious next to the big hotels and the borough will be sued without enough money to pay for the lawsuit. Ken said the Court would rule in favor of the hotels as the borough has done nothing in regard to planning, platting, and zoning and been negligent.

The sentiments of the Denali Borough attorney expressed in 1995 are still pertinent today. The Denali Borough has since adopted a comprehensive plan, but that document fails to fulfill the requirements of law.

In summary, the Commission concludes that the Denali Borough fails to satisfy the requirements of 19 AAC 10.900 regarding the transition plan.

#### **SECTION IV DISSENTING VIEWS OF COMMISSIONERS WASSERMAN AND CANNINGTON**

As noted previously, Commissioners Wasserman and Cannington voted to approve the petition, having concluded that the Denali Borough's annexation proposal met all of the standards governing annexation and detachment. This section summarizes their views.

##### **A. COMMUNITY OF INTERESTS (19 AAC 10.160).**

Testimony from the area's property owners, including the Ahtna Corporation and mining interests, emphasized the stronger affinity of these parties to the Denali Borough. Such affinity is a function of the proximity of the area to Denali Borough service delivery. Further, tourism and mining dominate the economy of both the area proposed for annexation and the Denali Borough.

The characteristics, activities and interests of most of the residents of the Matanuska-Susitna Borough are generally distinct from those of the residents of the area proposed for detachment.

An anecdotal example offered in testimony as evidence of the lack of integration of the area with the rest of the Matanuska-Susitna Borough was noted. That testimony referred to a map for use as a tourism guide for visitors to the Matanuska-Susitna Borough which excluded the area proposed for annexation/detachment.

A significant degree of separation between the area proposed for annexation from the political affairs of the Matanuska-Susitna Borough is evident. For instance, in order to personally attend Matanuska-Susitna Borough Assembly meetings, residents of the area are compelled to drive more than 300 miles round-trip. Voting in person at Matanuska-Susitna Borough elections requires a drive of approximately 150 miles round-trip to Trapper Creek, the nearest polling place in the Matanuska-Susitna Borough.

Residents of Cantwell and of the area proposed for annexation share long-term cultural attachments with the people of the Denali Borough.

The Denali Borough's practice of bringing government to the people by holding assembly meetings in various areas of the Borough on Sunday to accommodate the public helps foster integrated borough government. Such Denali Borough practices foster maximum local self-government of the people, for the people, and by the people. The Denali Borough's level of responsiveness in this context is certainly impressive.

Although the area proposed for annexation is compatible with both the Denali Borough and the Matanuska-Susitna Borough, it is clearly more compatible with the Denali Borough in terms of social, cultural, and economic characteristics and activities. Thus, the standard is met.

**B. POPULATION (19 AAC 10.170).**

Although the area proposed for annexation is sparsely inhabited, the population within the current boundaries of the Denali Borough exceeds 1,800 residents. Therefore, the Denali Borough would be large and stable enough to support the resulting Borough after annexation.

It was noted that during its seven-year history, the Denali Borough appears to have very properly managed tourism, growth, and service delivery.

The population of the Denali Borough is large enough to support the delivery of at least the modest level of services that it provides for areas already within the Denali Borough. Two of the services delivered to the area and its residents, ambulance service and education, are already delivered by the Denali Borough. Commissioners Cannington and Wasserman find the requirement of 19 AAC 10.170 to be satisfied.

**C. RESOURCES. (19 AAC 10.180).**

It was not evident that the Matanuska-Susitna Borough has any specific financial problems that preclude it from delivering borough services to the area if it remains within the jurisdiction of the Matanuska-Susitna Borough. However, concern exists about the degree to which the Matanuska-Susitna Borough has human resources, in terms of staff, to deliver services to the area. Matanuska-Susitna Borough deficiencies in that context generally relate to financial resources as far as the cost of dispatching Matanuska-Susitna Borough personnel such extensive distances to provide services on a regular basis.

The Matanuska-Susitna Borough manager stated during the public hearing that the Matanuska-Susitna Borough was not in a position to seek new issues to address. This suggests that the Matanuska-Susitna Borough has been experiencing such impacts from rapid growth that the Borough may be overextended in terms of its available human resources to deliver essential borough services.

In terms of financial resources, Denali Borough officials indicated that the net operating loss it would incur if the proposed annexation occurs would total approximately \$2,300 per year. Such a net operating loss would be easily absorbed by the Denali Borough. Modest new expenses would be incurred to cover solid waste collection and disposal issues in the short-term. As development occurs in the area proposed for annexation, additional services will be required by the area but economic development in the area should generate adequate revenues to support the area's requirements for additional borough services.

It was noted that more communication should have occurred between the Matanuska-Susitna Borough and the Denali Borough prior to the filing of the petition. Additional information should have been provided by the petitioner in terms of costs and bonded indebtedness issues. As a consequence of the lack of consultation between the two boroughs, the record reflects a lack of clarity regarding how closely or completely the Denali Borough investigated issues relating to reimbursement of the Matanuska-Susitna Borough's bonded indebtedness. For instance, the petitioner indicated that Denali Borough's obligations to the Matanuska-Susitna Borough for transfer of assets should be offset by the actual cost of services already incurred by the Denali Borough in the course of past service delivery within and for the area proposed for annexation. Major issues regarding reimbursement remain unsettled. The potential exists that the Denali Borough could be assuming greater liability in that context than it appears to anticipate.

The Denali Borough's projected budget shows that the Denali Borough has the resources to perform planning services for the area proposed for annexation. However, the degree to which the Denali Borough will choose to deliver such services is a separate issue.

Thus, the Denali Borough does exhibit adequate human and financial resources to provide essential services to the area proposed for annexation/detachment. Issues relating to reimbursement for Matanuska-Susitna Borough bonded indebtedness should be properly

addressed in an appropriate transition plan. The transition plan should make a fair and equitable offset for services furnished to date by the Denali Borough to the Matanuska-Susitna Borough. Thus, the standard is met.

**D. BOUNDARIES. (19 AAC 10.190).**

When the Commission traveled the Parks Highway through the Matanuska-Susitna Borough en route to Cantwell, there were no distinctive geographic features that served to differentiate the Denali Borough from the Matanuska-Susitna Borough. Both the Denali Borough and the Matanuska-Susitna Borough could reasonably contend that the territory should be within their respective jurisdictions. The arguments relating to the boundaries from both the petitioner and respondent are weighted as roughly equal.

Ideally, a borough's seat would be at the geographic center of the borough. In terms of service delivery, it is unfortunate that the seats of boroughs are not more centrally located. In the context of 19 AAC 10.190, it is problematical when citizens are so remote from their municipal government that they must drive approximately 150 miles round-trip to vote in person and rely on a neighboring borough for ambulance service, fire protection, and education.

Moderate concern exists that deviation from model borough boundaries could lead to future problems. Concerns about the conformance of the proposed post-annexation Denali Borough boundaries to natural geography are mitigated by recognition of the fact that when the model boundary at issue was set, previously existing boundaries were merely endorsed without substantive deliberation. Therefore, the model boundary issue should not dominate application of the standard.

Thus, the standard is met since the proposed post-annexation boundaries of the Denali Borough would include all the land and water necessary to provide full development of Denali Borough services on an efficient and cost-effective level.

**E. BALANCED BEST INTERESTS (19 AAC 10.200 AND 19 AAC 10.270).**

The proposed change would have no significant impact upon finances of the State of Alaska and other anticipated positive or negative effects upon the State of Alaska would be minimal.

The proposed annexation may generate several benefits to the area proposed for annexation. The territory proposed for annexation requires a higher level of borough government services than that currently being provided by the Matanuska-Susitna Borough. Because of proximity, the Denali Borough is in a better position to provide enhanced borough services to the area. Further, it has been demonstrated that the Denali Borough is more responsive to its constituents than is the Matanuska-Susitna Borough. The Denali Borough has a demonstrated commitment to addressing the needs of its citizens at a more accessible level.

Concern exists regarding whether the health, safety, and general welfare of area residents will be endangered by conditions existing or potentially developing in the territory. It was amply demonstrated that the people in the area proposed for annexation are more reliant upon the Denali Borough than the Matanuska-Susitna Borough for services to support their health, safety, and general welfare.

Future growth and development in the area may further strengthen ties between the area proposed for detachment and the community of Cantwell as more children from the area will likely receive education from the Denali Borough School District. The Denali Borough has historically accommodated the area in terms of service delivery. Such service delivery demonstrates shared commitment between the Denali Borough and the residents of the territory proposed for annexation. The absence of expressed opposition to the proposed change by residents of the Denali Borough or the area proposed for annexation/detachment was noteworthy in this context.

Activities of the Ahtna Corporation in support of the proposed boundary change were noted and it is recognized that such activities are entirely appropriate. ANCSA regional corporations were established by the federal government with a mandate to seek profits. The Ahtna Corporation is trying to fulfill that mandate on behalf of corporate shareholders. Since some of the Ahtna people are in the Denali Borough, the proposed change would benefit the Denali Borough and

benefit the people in the Denali Borough. Since the Denali Borough levies no property tax and such a tax is levied by the Matanuska-Susitna Borough, development of property in the area could be encouraged as a consequence of annexation. Expediting development of the territory would constitute a benefit to the state in terms of job growth although this is not viewed as likely to have a significant impact upon the state.

It is evident that the area's residents viewed the Denali Borough as the government that satisfies most of their need for municipal services. Thus, the proposed boundary change would serve the balanced best interests of the territory.

Persuasive testimony was offered about how development and an attendant demand for services will continue in the area proposed for annexation/detachment regardless of borough jurisdictional boundaries. The Denali Borough already extends fire and ambulance service to the area proposed for annexation/detachment and will continue to do so whether or not the proposed boundary change occurs. If the proposed change occurs, the cost of delivering such services would be at least partially defrayed by the tax revenues that the area would generate for the Denali Borough.

The Matanuska-Susitna Borough's arguments that detachment would negatively affect that Borough's bond rating are viewed as reasonable. Although, over the long-term, the proposed annexation/detachment could result in lost revenues to the Matanuska-Susitna Borough, such lost revenues would likely be minimal. The post-detachment Matanuska-Susitna Borough would still have extensive jurisdictional boundaries and a large population base. Thus, while the proposed boundary change is not in the best interest of the Matanuska-Susitna Borough in some respects, the Matanuska-Susitna Borough would not suffer significant diminution of its best interests if the annexation/detachment were effected.

This current proposed boundary change is part of a continued pattern of efforts to detach territory from the Matanuska-Susitna Borough. These persistent efforts suggest larger issues relating to the reasons why Matanuska-Susitna Borough service delivery is viewed as unsatisfactory by residents of remote areas of the Borough. While it would not be in the best interest of the Matanuska-Susitna Borough to have the area detached from its boundaries, negative impacts upon the Matanuska-Susitna Borough as a consequence of detachment may not be as significant as considered by the respondent.

Thus, the proposed change would have no significant impact upon the State of Alaska. The proposed boundary change would have limited impact on the best interests of the Matanuska-Susitna Borough but would serve the best interest of the Denali Borough. Therefore, the standard is met.

#### **F. ARTICLE X, §1 OF ALASKA'S CONSTITUTION.**

The number of local governments would neither increase nor decrease as a consequence of the proposed boundary change. There would be no duplication of tax-levying jurisdictions. There would be no dramatic effect upon maximum local self-government since both the Matanuska-Susitna Borough and the Denali Borough have the ability to govern this area. However, annexation would provide residents of the area with easier access to their borough government that could facilitate participation in borough affairs and thus be conducive to maximum local self-government. Although residents of the area already enjoy the right to vote in Matanuska-Susitna Borough elections, they must drive 150 miles round-trip to a polling place if they wish to vote in person.

Therefore, annexation of the area would promote maximum local self-government, though only slightly.

#### **G. ARTICLE X, §3 OF ALASKA'S CONSTITUTION.**

Although the population of the area proposed for annexation is minimal, students residing in the area are receiving education from the Denali Borough. Additionally, the area in question receives fire protection and emergency medical services from service providers in Cantwell.

Further, residents of the area receive most of their goods and services from vendors within the Denali Borough.

It is evident that common interests exist between people in the area proposed for annexation and the Denali Borough. This is in contrast to the evident lack of common interests between residents of the area and the residents of the Matanuska-Susitna Borough. The Matanuska-Susitna Borough has a long-term history of difficulty meeting the needs of some areas outside that Borough's urban core. Thus, annexation would promote a Matanuska-Susitna Borough with a population sharing greater common interests than is currently evident. Therefore, both the Matanuska-Susitna Borough and the Denali Borough would more fully embrace areas and populations with common interests if the boundary change occurred.

#### **H. EFFECT ON CIVIL AND POLITICAL RIGHTS (19 AAC 10.910).**

Nothing in the extensive record of this proceeding suggested that the proposed boundary change would violate this particular provision. Consequently, it is concluded that the proposed annexation will not deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

#### **I. TRANSITION PLAN (19 AAC 10.900).**

The Denali Borough has expressed the intent to extend essential borough services that are not already provided by Denali Borough to the people in the area within a month of approval of the proposed boundary change. This is reasonable, since the Denali Borough already provides many borough services to the area. While concern exists about the Denali Borough planning services, these concerns could readily be addressed. It is anticipated that the Denali Borough would make a good-faith effort to exercise all relevant and appropriate powers currently exercised by the Matanuska-Susitna Borough in the area proposed for annexation/detachment.

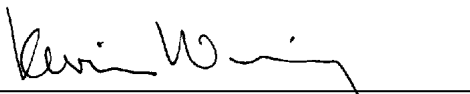
Concern exists about the lack of consultation between the petitioner and the Matanuska-Susitna Borough regarding transition issues. More effort should have been devoted to transition provisions by both the petitioner and the respondent. Such effort should have been initiated by the Denali Borough, as the petitioner. The proposed transition plan was minimal and there is a lack of specific information relating to plans to increase or improve planning for the area. Questions also exist relating to liability associated with delivery of ambulance and fire protection services. Issues related to assumption of bonded indebtedness associated with the area remain unresolved, although the Denali Borough has persuasively asserted that it has the financial ability to reimburse the Matanuska-Susitna Borough for such bonded indebtedness. However it is unclear how the parties intend to address the issue and reach agreement.

### **SECTION V ORDER OF THE COMMISSION**

Based on the findings and conclusions set out in Section III of this decisional statement, the Local Boundary Commission concludes that some, but not all of the standards and requirements for annexation are satisfied by the Denali Borough's petition, and that the standard for detachment is not met. Therefore, the Commission hereby denies the March 4, 1996 petition of the Denali Borough for the detachment and annexation of approximately 992.5 square miles.

Approved in writing this 31st day of December, 1997.

**LOCAL BOUNDARY COMMISSION**

BY:   
**Kevin Waring, Chairperson**

**Attest:**

  
**Dan Bockhorst, Staff**

### **RECONSIDERATION BY THE COMMISSION**

Within 20 days after this decision becomes final under 19 AAC 10.570(g), a person may file a request for reconsideration of the decision. The request must describe in detail the facts and analyses that support the request for reconsideration.

If the Commission has taken no action on a request for reconsideration within 30 days after the decision became final under 19 AAC 10.570(g), the request is automatically denied.

If the Commission grants a request for reconsideration, the petitioner or any respondents opposing the reconsideration will be allotted 10 days from the date the request for reconsideration is granted to file a responsive brief describing in detail the facts and analyses that support or oppose the request for reconsideration.

### **JUDICIAL APPEAL**

A judicial appeal of this decision may also be made under the provisions of the Alaska Rules of Appellate Procedures, Rule 601 et seq. An appeal to the Superior Court must be made within thirty days after the last day on which reconsideration can be ordered.

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